

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**
Case No. 3:20-cv-00540-RJC-DSC

DANIELLE CIRILLO on behalf of herself and)
all others similarly situated,)
)
Plaintiffs,)
) **DEFENDANT'S MOTION TO DISMISS**
v.) **OR TRANSFER UNDER 28 U.S.C. §**
) **1406(A) OR, ALTERNATIVELY,**
CITRIX SYSTEMS INC.,) **TRANSFER UNDER 28 U.S.C. § 1404(A)**
)
Defendant.)

Defendant CITRIX SYSTEMS, INC., by its attorneys and pursuant to Federal Rule of Civil Procedure 12(b)(3), moves this Court to dismiss or transfer this action under 28 U.S.C. § 1406(a) or, alternatively, to transfer it under 28 U.S.C. § 1404(a). In support of this Motion, Citrix states as follows:

1. Plaintiff Danielle Crillo filed her original Complaint on September 29, 2020 and her First Amended Collective and Class Action Complaint on October 1, 2020, alleging four claims against Citrix: (1) an individual and a collective claim under the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* (“FLSA”); (2) an individual and a class claim under the North Carolina Wage and Hour Act, N.C. Gen. Stat. § 95-25.1, *et seq.* (“NCWHA”); (3) an individual claim under the Family and Medical Leave Act, 29 U.S.C. § 2601, *et seq.* (“FMLA”); and (4) an individual common law claim of wrongful discharge in violation of North Carolina public policy.

2. On October 21, 2020, Citrix filed an unopposed Motion for Extension of Time to Answer or Otherwise Respond to Plaintiff’s First Amended Collective and Class Action Complaint to extend its response deadline to November 13, 2020. (Dkt. 8.) This Court granted the motion for extension the same day in a text order.

3. Citrix respectfully submits that this action should be dismissed or transferred to the Eastern District of North Carolina, Raleigh Division because the Western District of North Carolina is an improper venue. In the alternative, Citrix requests that this action be transferred to the Eastern District of North Carolina, Raleigh Division for the convenience of the parties and witnesses. As detailed more thoroughly in Citrix's memorandum of law filed contemporaneously herewith, venue is not proper in the Western District of North Carolina because this action does not meet any of the categories described in the general venue statute, 28 U.S.C. § 1391. Both parties reside in Raleigh, not Charlotte or anywhere else in this District, nearly all of the witnesses worked for Citrix in, and reside in, Raleigh, Citrix does not have offices or inside sales employees in the Western District of North Carolina, and the acts or omissions giving rise to each of Cirillo's four claims occurred in Raleigh. In the alternative to dismissal or transfer under 28 U.S.C. § 1406(a), the action should be transferred to the Eastern District of North Carolina, Raleigh Division, where it could have been brought under 28 U.S.C. § 1404(a), because the balance of the eleven factors considered by the courts weighs heavily in favor of such a transfer.

4. On October 30, 2020, Defendant's counsel discussed this motion with Plaintiff's counsel, Gilda A. Hernandez, who advised that Plaintiff does not consent to the dismissal or transfer of this action to the Eastern District of North Carolina, Raleigh Division.

The specific bases for Citrix's motion are more fully set forth in its memorandum of law filed contemporaneously herewith.

Respectfully submitted,

CITRIX SYSTEMS, INC.

By s/ Frederick T. Smith
Frederick T. Smith

North Carolina Bar No. 45229
Attorney for Defendant
SEYFARTH SHAW LLP
121 W. Trade Street
Suite 2020
Charlotte, North Carolina 28202
Telephone: (704) 925-6023
E-mail: fsmith@seyfarth.com

Date: November 13, 2020

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CHARLOTTE DIVISION**
Case No. 3:20-cv-00540-RJC-DSC

DANIELLE CIRILLO on behalf of herself and)
all others similarly situated,)
)
Plaintiffs,)
)
v.) **CERTIFICATE OF SERVICE**
)
CITRIX SYSTEMS INC.,)
)
Defendant.)

I certify that on November 13, 2020, I filed DEFENDANT'S MOTION TO DISMISS
OR TRANSFER UNDER 28 U.S.C. § 1406(A) OR, ALTERNATIVELY, TRANSFER UNDER
28 U.S.C. § 1404(A) with the Clerk of Court using the CM/ECF system, which will
automatically send e-mail notification of such filing to the following attorneys of record:

Gilda A. Hernandez
Charlotte C. Smith
Robert W.T. Tucci
The Law Offices of Gilda A. Hernandez, PLLC
1020 Southhill Drive, Suite 130
Cary, North Carolina 27513

s/ Frederick T. Smith
Frederick T. Smith
Attorney for Defendant